

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

JERRY D. POUGH,

Petitioner,

vs.

DOUG GILLESPIE, *et al.*,

Respondents.

2:13-cv-00644-JCM-NJK

ORDER

This habeas matter under 28 U.S.C. § 2241 comes before the court on petitioner's motion (#29) for permission to appeal.

The motion is captioned for the court of appeals, but at least a copy has been received and filed by the clerk of this court. As of the time of the preparation of this order, review of the online docket records of the court of appeals did not reflect the filing of a corresponding document in that court.

Out of an abundance of caution, the court will direct the clerk to docket and process the filing also as a notice of appeal from the January 23, 2014, order and judgment dismissing the action without prejudice. To the extent that petitioner otherwise seeks permission to appeal from the district court as opposed to the court of appeals, the motion will be denied as a motion submitted to the district court. The court reiterates its finding in denying a certificate of appealability that jurists of reason would not find the district court's dismissal of the action without prejudice to be debatable or wrong. See #27, at 7.

1 IT THEREFORE IS ORDERED that petitioner's motion (#29) for permission to appeal
2 is DENIED to the extent that the motion is submitted to the district court, subject to
3 consideration by the court of appeals as an application to that court for a certificate of
4 appealability.

5 IT FURTHER IS ORDERED that the clerk shall docket and process the motion also
6 as a notice of appeal with a February 20, 2014, filing date, seeking to appeal the order and
7 judgment of dismissal entered on January 23, 2014.

8 IT FURTHER IS ORDERED that the clerk shall SEND a copy of this order to the
9 **marshal** for service and that, as promptly as is practicable, the marshal shall SERVE the
10 respondent **Sheriff Douglas C. Gillespie, at the Las Vegas Metropolitan Police**
11 **Department, 3141 Sunrise Avenue, Las Vegas, Nevada 89101**, or wherever he otherwise
12 may be served most efficiently by the marshal.

13 IT FURTHER IS ORDERED that counsel for the sheriff shall enter a notice of
14 appearance in the district court within **twenty-one (21) days** of service of this order and shall
15 review the status of the appellate proceeding with respect to any appropriate action to be
16 taken therein, including a notice of appearance.¹

17 IT FURTHER IS ORDERED that the clerk shall informally electronically serve the
18 respondent state attorney general with a copy of this order, that within **twenty-one (21) days**
19 of entry of this order counsel with the attorney general shall enter a notice of appearance in
20 the district court, and that said counsel shall review the status of the appellate proceeding with
21 respect to any appropriate action to be taken therein, including a notice of appearance.

22 IT FURTHER IS ORDERED that no additional response is required from respondents,
23 other than to respond to any orders of a reviewing court.²

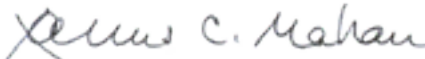
24 *////*

26 ¹Petitioner's pending state criminal proceeding is No. C-12-281031-1.

27 ²The court leaves to respondents' counsel the matter of who will take the lead role on appeal if a
28 response is directed by the court of appeals.

1 IT FURTHER IS ORDERED that, following upon the filing of a notice of appearance
2 by each counsel in the district court, the clerk shall provide the respective counsel copies of
3 all filings herein up to counsel's notice of appearance, either by regeneration of notices of
4 electronic filing to counsel or by such other method consistent with the clerk's current
5 practices.

6 DATED: March 14, 2014.

7
8 

9
10 JAMES C. MAHAN
United States District Judge
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28